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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,692	05/22/2001	Lindell C. Richey	112703-090	5308

29156 7590 10/26/2004  
BELL, BOYD & LLOYD LLC  
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CHICAGO, IL 60690-1135

EXAMINER

CORBIN, ARTHUR L.

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

### **EXAMINERS ANSWER**

This is in response to the brief on appeal filed July 12, 2004

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Art Unit: 1761

The rejection of claims 1-36 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

5,336,509	McGrew et al	8 – 1994
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5,536,511	Yatka	7 - 1996
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**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-36 rejected under 35 U.S.C. 103 (a). This rejection is set forth in a prior Office Action, mailed on 040104, paragraph No. 3.

**(11) *Response to Argument***

Appellant's reference to the use of waxes by Yatka is not convincing set Yatka neither requires that waxes be present nor discloses that waxes are essential and since appellant only claims a wax-free product in claim 8. Moreover, none of Yatka's examples or tables use any waxes, despite appellant's contrary belief. As a result, it would have been obvious to eliminate any wax with its function if such was present in Yatka's gum product, if a wax-free gum product is desired.

Art Unit: 1761

Although McGrew et al may prefer to produce wax-free products, the products could be substantially wax-free (col. 2, line 47) or minimize the presence of wax thereby permitting the presence of small amounts of wax. Nevertheless, since wax is not essential to the gum products of Yotka, McGrew et al is properly combinable with Yotka, despite appellant's contention to the contrary.

Appellant's alleged evidence of unexpected results, as discussed on pages 12-13 of the brief, is not convincing. There is no comparison with the closed prior art, viz Mc Grew et al, and there is no direct comparison between a chewing gum having less than 5 % bulk sweetener and a chewing gum having 5% or greater of bulk sweetener.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

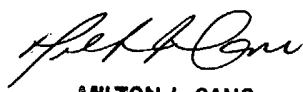


ARTHUR L. CORBIN  
PRIMARY EXAMINER

10-22-04

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Technology Center 1700

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday - Friday from 10:30 am to 8:00 pm.

Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Corbin/af  
October 20